IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 3529 OF 2006
(For Leave to Appeal)
IN
CRIMINAL APPEAL NO. OF 2006

The State of Maharashtra ..Appellant
Vs.
Faiyaz @ Baba Arif Zariwala and anr. ..Respondents
(Org.Accd.Nos.1 & 2)

Ms. Usha V. Kejriwal, APP for Appellant-State.

CORAM: B.H. MARLAPALLE & R.S. MOHITE,JJ.

Date : February 21, 2007.

P.C.:

1. This is an application filed by the State for leave to appeal under Section 378(3) of the Cr.P.C. against the order of acquittal passed against accused no.1 under Sections 342 and 365 read with Section 34 of IPC and against accused no.2 for all the offences she was charged in Sessions Case No. 957 of 1993, by the learned Additional Sessions Judge, Greater Mumbai vide his Judgment and Order dated 15/6/2006.

2. We have gone through the reasoning set out by the trial court and more particularly the evidence of PW 4, the prosecutrix read with the evidence of PW 2

and PW 3, being the mother and father of the prosecutrix. The evidence of PW 4 read as it is did not make out a case for the offences punishable under Sections 342 and 365 read with Section 34 of IPC against accused nos.1 and 2. She also stated that accused No.1 was forcing her to sexual intercourse in the absence of accused no.2 and it was the case of the defence that the person responsible for the pregnancy of PW 4 was one Ashok. The baby girl born to PW 4 was taken away from her but it was subsequently returned to her within two months or so and it was clear that the baby was not well and as soon as she recovered, the prosecutrix was put in custody of the infant. We are, therefore, satisfied that the reasoning set out by the learned trial Judge does not call for reconsideration against the acquittal of both the accused and hence there is no case made out to grant leave to appeal.

3. The application is, therefore, rejected.

(R.S. Mohite, J.) **(B.H. Marlapalle,J.)**